

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 23 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANUBHAI NARANBHAI PALANIA

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioner

MR KT DAVE APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 15/10/97

ORAL JUDGEMENT

The learned Judicial Magistrate, First Class, in his otherwise detailed and elaborate order has tried to make out a case that there could be possibility of further investigation but unfortunately has lost sight of the fact that the quantity of 1.700 Kg. of opium said to have been found from the field of the present petitioner/accused being from open field it was also a question as

to whether the possession thereof of the accused was conscious one.

Initially the matter was investigated on receipt of information by Shri Jadeja, a Police Sub Inspector of Joravarnagar Police Station, Surendranagar in connection with CR No. 17/90 registered with that police station for the offences under Sections 17 and 18 of the Narcotic Drugs and Psychotropic Substances Act. However, the investigation does reveal that there were two persons present in the field at the time of the raid and there were shepherd keeping their herds of goat and sheep for providing organic manure in the field. In this background, admittedly, when the petitioner was absent, whatever be the result of the elaborate investigation indicated in the order of the learned Magistrate, the important question connecting the accused with find of the narcotic substance was also remained unanswered and merely because it is found from his field it cannot be said that it was in his conscious possession, the request for A summary made by the subsequent investigating agency, CID Crime is imminently justified. Therefore, the impugned order of the trial magistrate is set aside. The request for A summary is granted. Revision application is allowed. Rule is made absolute accordingly.